

REMARKS/ARGUMENTS

This Amendment and the following remarks are intended to fully respond to the Final Office Action mailed April 29, 2008. In the Final Office Action claims 1-3, 6-8, 10-13, 16-18, 22, and 23 were examined, and all claims were rejected. Claim 3 was rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. Claims 1, 2, and 18 were rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. Claims 1-3, 6-8, 10-18, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thread Topic (TT), "Re: CERT_REQ_PAYLOAD usage" (hereinafter "Thread Topic") in view of Jinmei, "How to write UDP/Ipv6 applications that care about path MTU," (hereinafter "Jinmei") and further in view of in view of Kent et al., "Fragmentation Considered Harmful," (hereinafter "Kent"). Claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Thread Topic, Jinmei, and Kent in view of Cert et al., "A Protocol for Packet Network Intercommunication," (hereinafter "Cert").

In this Response, claims 1, 3, 6, 11, 13, 16, 18, and 22 have been amended. No claims have been canceled or are newly added. Reconsideration of the rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested.

Interview Summary

Tim Scull and Patrick Evans thank Examiner Jeffery Williams for the in-person interview conducted on December 12, 2007. During the interview, Mr. Scull and Mr. Evans presented arguments supporting the patentability of the claims over the references cited, including the Kent reference, in the Final Office Action. Also, Mr. Scull, Mr. Evans and Examiner Williams discussed possible claim amendments, including amendments to claim 1, that would make the claims further patentable over the cited references. No agreement was reached on allowance of claims.

Objections to the Drawings

The drawings were objected to as allegedly failing to show features specified in the

claims. FIG. 7 has been amended to include metadata. As stated in the specification at page 22, lines 1-7, "[e]ach fragment will thus include information (metadata) that uniquely identifies the original IKE payload and its position within the original IKE payload. For example, the metadata transmitted in a first fragmented message, such as message 171, may be as follows: {id=1, num=1, flags, last_packet_flag = false}. The data transmitted in a second message, such as message 174, may be as follows: {id=1, num=2, flags, last_packet_flag = false}."

With respect to the other claimed features, FIG. 5 shows a fragmenter "150," which as described in the specification is the means for adding state information to packets. *See Specification*, p. 21, ln. 16-p. 22, ln. 2. FIG. 3 shows the UDP protocol stack, which is the means for adding UDP headers to packets. Accordingly, these features specified in the claims are shown in the drawings. Applicants respectfully request that the objections to the drawings be withdrawn.

Furthermore, the newly added element of claim 11, "means for receiving a vendor identification value from the receiver node and using the vendor identification value to determine that the receiver node is IKE fragmentation capable" is also the fragmenter 150 shown in FIG. 5. *See Specification*, p. 20, lns. 14-20.

Specification Rejection

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The office action alleges that the applicant has not pointed out where in the specification there is a written description of the element of claim 3 stating "*wherein the fragmenter module does not split the IKE data packets unless no response to a previously-sent IKE data packet has been received.*" Claim 3 has been amended to recite "*wherein the fragmenter module does not split the IKE data packets when a response to a previously-sent IKE data packet has been successfully received within a predetermined time interval.*" This language is supported by the specification at p. 19, lns. 2- 22. Applicants respectfully request withdrawal of the objection to the specification.

Claim Rejections – 35 U.S.C. § 112

Claim 3 was rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. As noted above, claim 3 has been amended to recite “wherein the fragmenter module does not split the IKE data packets when a response to a previously-sent IKE data packet has been successfully received within a predetermined time interval.” This language is supported by the specification at p. 19, lns. 2-22.

Claims, 1, 2, and 18 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicants respectfully disagree with the rejection. In any case, claims 1, 2, and 18 have each been amended, rendering the rejection moot.

Claim Rejections – 35 U.S.C. § 103

Claims 1-3, 6-8, 10-18, 20, 22, and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over combinations of the Thread Topic, Jinmei, Kent and Cert references. Applicants traverse the rejection, because the cited references fail to teach all the elements of the amended claims.

Claim 1 has been amended to recite “in response to receiving the vendor identification value, using the vendor identification value to determine that the receiving node is IKE fragmentation capable.” None of the cited references disclose this feature of claim 1.

The Thread Topic reference does not teach that an IKE application should fragment a packet and therefore does not teach “in response to receiving the vendor identification value, using the vendor identification value to determine that the receiving node is IKE fragmentation capable,” as recited in claim 1. Additionally, the Jinmei reference teaches only that an application can determine a path maximum transmission unit (MTU) to keep packets below the path MTU, but does not disclose “using the vendor identification value to determine that the receiving node is IKE fragmentation capable.” Kent also makes no mention of a “in response to receiving the vendor identification value, using the vendor identification value to determine that the receiving node is IKE fragmentation capable” as recited in claim 1.

Finally, the Cert reference similarly fails to teach the use of a “using the vendor identification value to determine that the receiving node is IKE fragmentation capable.” The Cert reference describes a protocol that can be used to share resources that are in different packet switching networks, but does not teach or suggest the use of a vendor identification value in making a determination of whether to fragment an IKE packet.

The Thread Topic, Jinmei, Kent, and Cert references, alone and in combination, fail to teach all of the elements of the claims. A *prima facie* case of obviousness has therefore not been established. Claim 2 depends on claim 1 and is allowable for at least the same reasons.

Amended claim 3 recites a fragmenter module that, *inter alia*, “receives a vendor identification value from a network node and in response to receiving the vendor identification value uses the vendor identification value to determine that the network node is IKE fragmentation capable.” None of the Thread Topic, Jinmei, Kent and Cert references, alone or in combination, teach “a fragmenter module” with the claimed functionality. Claim 3 is therefore patentable over the Thread Topic, Jinmei, Kent and Cert references.

Amended claim 6 recites “sending a vendor identification value, the vendor identification value indicating the capability to process IKE fragments.” None of the cited references teach the use of a vendor identification value, much less that the vendor identification value indicates that a receiving node is capable of processing IKE fragments. Claim 6 is therefore allowable over the Thread Topic, Jinmei, Kent, and Cert references for the same reasons as noted above with respect to claim 1. Claims 7, 8, and 10 depend upon claim 6 and are allowable for the same reasons.

Claim 11 has been amended to recite “means for receiving a vendor identification value from the receiver node and using the vendor identification value to determine that the receiver node is IKE fragmentation capable.” As indicated above, the references cited in the office action fail to teach a system that includes this feature. Thus, a *prima facie* case of obviousness has not

been established for claim 11, making claim 11 patentable over the references. Claim 12 depends upon claim 11 and is allowable for at least the same reasons.

Claim 13 has been amended, and now recites, *inter alia*, “using a vendor identification value received from the receiving node to determine whether the receiving node is capable of processing IKE fragments; fragmenting the IKE packet into a plurality of smaller IKE packets to avoid the fragmenting of the IKE packet by the IP protocol layer.” The method of claim 13 is allowable over the Thread Topic, Jinmei, and Kent references because those references fail to teach “using a vendor identification value received from the receiving node to determine whether the receiving node is capable of processing IKE fragments.”

Moreover, the Kent reference specifically teaches away from avoiding “fragmenting the IKE packet into a plurality of smaller IKE packets to avoid the fragmenting of the IKE packet by the IP protocol layer” as recited in claim 13. Kent states that the “IP is a layered protocol architecture, and fragmentation avoidance must be done at the right layer. It makes little sense to build redundant mechanisms into several layers if it is possible to do it once. This implies that the right place for fragmentation avoidance is the layer common to all IP communication, the IP datagram layer itself. . . .” *Kent*, § 3, p. 79, col. 1. As this statement illustrates, Kent not only fails to compensate for the deficiency in the other cited references, Kent teaches against the features of claim 13, making claim 13 further patentable over Kent and the other cited references. Claim 16 depends upon claim 11 and is allowable for at least the same reasons.

Claim 18 has been amended to recite “in response to receiving the vendor identification value, using the vendor identification value to determine that the receiver node is IKE fragmentation capable.” As indicated above, the cited references, alone or in combination fail to teach the use of a vendor identification value to determine whether a receiver node is IKE capable. Claim 18 is therefore patentable over the cited references.

Claim 22 has been amended to recite "sending a vendor identification value, the vendor identification value indicating that a receiving node is capable of processing IKE fragments." None of the cited references teach the use of a vendor identification value indicating that a receiving node is capable of processing IKE fragments, as recited in claim 22. Therefore, claim 22 is allowable over the cited references. Claim 23 depends upon claim 22 and is allowable for the same reasons.

Conclusion

This Amendment fully responds to the Final Office Action mailed on April 29, 2008. Still, the Final Office Action may contain arguments and rejections that are not directly addressed by this Amendment because they are rendered moot in light of the preceding arguments in favor of patentability. Hence, failure of this Amendment to directly address an argument raised in the office action should not be taken as an indication that the Applicant believes the argument has merit. Additionally, failure to address statements/comments made by the Examiner does not mean that the Applicants acquiesce to such statements or comments. Furthermore, the claims of the present application may include other elements, not discussed in this Amendment, which are not shown, taught, or otherwise suggested by the art of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability.

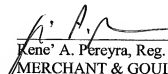
A one-month extension of time to extend the period for response to the outstanding Final Office Action is hereby requested. The fee for the extension is being paid herewith. It is believed that no further fees are due with this Amendment. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

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